

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PharmacyChecker.com LLC,

Plaintiff,

- against -

National Assoc. Of Boards of Pharmacy et al.,

Defendants.

ORDER

19 Civ. 7577 (KMK) (PED)

PAUL E. DAVISON, U.S.M.J.:

This Order addresses the dispute outlined in Dkts. 228-30. Familiarity with the record is assumed.


I agree with defense counsel that plaintiff is required under Rule 26(a)(2)(B)(ii) to disclose “all materials, regardless of privilege, that plaintiff’s expert generated, reviewed, reflected upon, read, and/or used in formulating his conclusions.” *SEC v. Rio Tinto PLC*, 2021 WL 2186433 at *6 (S.D.N.Y. May 28, 2021). Defendants need not show that the expert “relied” on the materials in formulating his ultimate opinion in order to obtain disclosure. *Id.* Although plaintiff claims that the expert referenced his earlier, 2015 writing only in his capacity as a “regulatory consultant” for plaintiff, I find that the “close timing” between the expert’s retention as a consultant in November 2021 and his subsequent designation as a testifying expert in early 2022 defeats plaintiff’s argument that a document the expert consulted in his earlier role is not germane to formulation of his opinion. *Id.* at *7. The expert’s deposition testimony appears to support this analysis. [Dkt. 228-1, pp. 4-5 (ECF pagination).]

Accordingly, plaintiff’s objection to disclosure of the expert’s 2015 “writing” is

OVERRULED. Plaintiff's shall provide the document for inspection by defense counsel within 5 business days of this Order.

Dated: April 15, 2022
White Plains, New York

SO ORDERED



Paul E. Davison, U.S.M.J.